



VIA Federal Express

October 1, 2019

The Library Square Foundation
for Art, Culture and Science
c/o: Alexandra Hesse, Executive Director
209 East 500 South
Salt Lake City, UT 84111

Re: Notice of Default

Dear Ms. Hesse:

On September 11, 2019, the City received an email from the Leonardo's Board Chair, Lisa Smith, declining to enter into the City's proposed amendment to the lease agreement dated June 24, 2009 between The Library Square Foundation for Art, Culture and Science ("Leonardo") and the City (the "Lease") for use of the City's old main library building (the "Building").

The City has worked in good faith to bring the Leonardo into compliance with the Lease and disputes your implication that it is willfully trying to disrupt or damage the Leonardo's ability to conduct business. As you are aware, the City has been working with the Leonardo for years to resolve the Leonardo's failure to perform those obligations, including entering into a repayment for a portion of the Leonardo's delinquent utility payments. As previously communicated, the City's intent in proposing a modified Lease agreement was to help the City and the Leonardo use the Building more efficiently by adding other tenants, which would also help alleviate the Leonardo's ongoing difficulty performing its obligations under the Lease.

Though the September 11 email claims that the Leonardo is now ready "to begin negotiations on the issues that both parties have with one another," the City has already made multiple good-faith attempts to resolve the issues over the past several years, including addressing allegations by the Leonardo that the City was not performing under the Lease. In fact, even though the City has undertaken extensive roof repairs, the Leonardo has unreasonably and indefinitely delayed the project and as a result the cost of the project has increased and is behind schedule. Moreover, for over three months the Leonardo did not respond to the City's overtures to amend the Lease and negotiate a resolution to the Leonardo's failure to perform its obligations under the Lease, while the Leonardo continued to fail to pay or otherwise perform under the Lease.

Accordingly, the City hereby serves this **notice of default** pursuant to Sections 25.1.1 and 25.1.2 of the Lease for the Leonardo's failure to perform its obligations under the Lease as follows:



Monetary Payment Defaults:

Sections 11.1.1 through 11.1.5 of the Lease specify that the Leonardo shall pay to the City, within 15 days of receiving an invoice, the “costs of natural gas allocated to the Building,” the “cost of electricity for the Building,” the “cost of domestic water,” and the “costs associated with the operation of the Boiler Plant” as segregated in the City’s accounting system and “as allocated to the Building” based upon the formula set forth in Section 11.1.4 of the Lease. Section 11.3 of the Lease underscores that “the City shall have no obligation to provide additional financial support to the Leonardo or to the operation or use of the Building.”

The Leonardo currently owes **\$398,717.16** for the cost of utility service to the Building and the majority of that balance is over six months past due, as detailed in Attachment 1. In the City’s attempts to bring the Leonardo current on the utility costs, the City and the Leonardo entered into a repayment plan for the then-past due utility costs on or about October 17, 2017. Under the terms of the repayment plan, the Leonardo was to keep current on its utility costs and pay the City \$1,000.00 per month on past due amounts. The Leonardo did not keep current or pay the \$1,000.00 installments. As an accommodation and without waiving its rights to payment, the City postponed collection of the overdue amounts for an additional year, until December 31, 2018. Even though the City continued to invoice the Leonardo, the Leonardo did not resume payments. Therefore, the Leonardo’s payment for utility costs is now over six months past due.

Pursuant to Section 25.1.1 of the Lease, the Leonardo must cure its failure to pay the amounts listed above within 30 days of the date of this notice.

Performance Defaults:

Section 9.1 of the Lease specifies the Leonardo’s maintenance obligations:

The Leonardo shall keep and maintain the Building and all parts thereof in good and clean condition and repair. . . . In addition to the foregoing, the Leonardo’s responsibility includes the regular maintenance and upkeep of electrical, plumbing, elevator, escalator, and mechanical systems exclusively servicing the Premises, such maintenance to be done according to National Fire Protection Association, National Electric Code (NEC) 70B, National Fire Protection Association (NFPA) 72 and 75, and ANSI-ASHRE-ACCA standard 180-2008.

Further, under Section 8 of the Lease, any alterations the Leonardo makes that are “reasonably require[d] in connection with operating the Building, including but not limited to, the installation of exhibits or other programming,” must be made “at The Leonardo’s sole cost and expense [and] in a good and workmanlike manner.”



The Leonardo has failed to perform its maintenance obligations under Section 9.1 of the Lease and has failed to make alterations to the Building in a “good and workmanlike manner.” These defaults were observed during a walk-through of the Building by the City’s Architect, Chief Building Official, Fire Protection Engineer, Facilities Manager, a Mayor’s Office representative, and the Deputy Director of Public Services on April 5, 2019:

Maintenance Defaults Creating Life-Safety Hazards:

1. Broken plate glass window above the exposition on the east wall above a children’s play area. That area should be closed immediately until the broken window has been repaired/removed/protected. *Note: the east wall window was stabilized by City Glass and boarded up by SLC Facilities on April 9, 2019.* Other windows are broken or cracked in multiple locations.
2. Two sections of the escalator are not operating, and those sections are being used by staff and patrons. Inoperable escalators should be locked out.
3. Fire sprinkle protection missing at the coffee kiosk (cloud and room), under the stairs of the aircraft exhibit, and in the dream tunnel.
4. Fire sprinklers are too close to each other in several areas, likely because walls were removed without permits or inspections in the:
 - a. First floor between the aircraft exhibit and exit stair (southwest)
 - b. Third floor office (east corridor)
5. Inadequate fire sprinkler system for the Leonardo’s uses of the basement woodshop and spray paint room.
6. Several exhibit walls are blocking the fire sprinkler spray pattern; wall height must be 18 inches below the fire sprinkler head deflector.
7. Basement and second floor space partitions improperly installed without permits must be removed.
8. Basement and sub-basement standpipe outlets have been plugged and the correct N.S.T. male coupling and cap must be reinstalled.
9. Electrical and data equipment at the floor assemblies and at walls are penetrating fire rated assemblies.
10. Exit enclosures are blocked with the storage of tables north central at main level and the sub-basement room under the stairs which is protected but the door removed.
11. Several failures to maintain the safety and cleanliness of the use of a room as a wood shop, increasing the risk of damage to the Building:
 - a. Must have dust collection at all dust making equipment (saws, routers, sanders, etc.);
 - b. Dust covers must be installed over all outlets – especially damaged floor outlets;
 - c. Must have Class II electrical protection for switch gear, circuit protection shall be provided;
 - d. Electrical bonding must be provided between dust collection and power tools.
12. Several failures to maintain the safety and cleanliness of the use of a room to spray paint, increasing the risk of damage to the Building:



- a. Class I electrical is required for all electrical lights, electric motors within the paint room;
- b. Ventilation that terminates at least 30 ft. from the property line is required;
- c. Other items are also required to legalize the woodshop and spray paint areas, all of which will require permits and inspections.

13. Improper storage of gas-powered lawnmowers inside the Building.

Repair and Maintenance Defaults:

1. The Leonardo maintenance staff had removed filters rather than replace them on a regular schedule as needed. Blocked or missing filters can damage the air handler.
2. Electrical floor boxes exposed. Many of the existing floor boxes are not functional or are missing the appropriate hardware to even determine if they are functional.
3. Track lighting sections are not operational most likely due to the Leonardo not replacing lamps or fixtures.
4. Thermostat on second floor not replaced or repaired.
5. Sections of the escalators not working.
6. The elevators service has not been performed, and the service elevator rarely functions as needed.

Insurance Related Defaults:

Section 21.7 of the Lease states:

Neither Party shall permit the Building to be used for any purpose that would render the insurance thereon void or cause cancellation thereof or cause the insurance risk to be more hazardous, or increase the insurance premium in effect at the time of the commencement of the Term.

Multiple performance defaults listed above constitute hazards that have significantly increased the insurance risk, as identified in the report issued from the City's third-party insurance carrier, FM Global, enclosed as Attachment 2.

Two immediate life-safety defaults must be cured immediately: (a) the basement may not be used for hot work and painting without adequate ventilation; and (b) several exhibit walls are blocking the fire spray pattern; wall height must be 18 inches below the fire sprinkler head deflector.

Pursuant to Section 25.1.1 of the Lease, the City hereby notifies the Leonardo that it has 30 days from the date of this letter to pay the total amount due to the City as identified herein. Pursuant to Section 25.1.2 of the Lease, the City hereby notifies the Leonardo that it has 90 days from the date of this letter to cure all other defaults identified herein; provided, however, that the two life-



safety defaults must be cured immediately and verified and accepted by the City. If such defaults are not timely cured, the City will pursue its rights and remedies.

The City remains ready to discuss an equitable resolution of Leonardo's defaults and will work with the Leonardo to schedule a mutually agreed upon time to meet before the expiration of the default period. Please do not construe our willingness to meet as a waiver of this notice, or any default, whether or not such default is listed above.

Sincerely,

A handwritten signature in black ink, appearing to read "Dan Rip".

Dan Rip, Neighborhood Development Manager
Department of Community and Neighborhoods

A handwritten signature in black ink, appearing to read "Kristian Anderson".

Kristian Anderson
Senior Advisor for Arts and Culture
Office of the Mayor

The logo for Fox 13 Now, featuring the text "fox 13 now.com" in a stylized font.

cc: Lisa Davis (*via email*)
Lisa Shaffer (*via email*)
Marcia White (*via email*)
Patrick Leary (*via email*)
Boyd Ferguson (*via email*)
Megan DePaulis (*via email*)

JACQUELINE M. BISKUPSKI
Mayor

OFFICE OF THE MAYOR



ATTACHMENT NO. 1
(Utility Costs)



JACQUELINE M. BISKUPSKI
Mayor

OFFICE OF THE MAYOR



**ATTACHMENT NO. 2
(FM Global Report)**



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